

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Longview, Texas

**LONGVIEW CABLE TELEVISION
COMPANY, INC.¹**

Employer

and

Case No. 16-RC-10498

**COMMUNICATION WORKERS OF AMERICA,
AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. The Petition and Issues Presented

The Petitioner seeks to represent all full-time and part-time technicians, dispatchers, warehousemen, and customer service employees employed by the Employer at its Longview, Texas and Kilgore, Texas facilities and to exclude all other employees, including sales, production, guards, and supervisors, as defined in the Act. At hearing, the Petitioner made clear that it specifically seeks a unit consisting of all full-time and part-time installer technicians, maintenance technicians, service technicians, dispatchers, warehousemen, bookkeepers, accounts receivable clerks, drive-through clerks, front counter customer service representatives, and customer service representatives. In addition, the Petitioner would proceed to an election in a unit larger than or different from the petitioned-for unit.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

The Employer contends that the petitioned-for unit is inappropriate and that its employees at the Longview and Kilgore facilities should be divided into two units. The first unit consists of all full-time and part-time installer technicians, maintenance technicians, service technicians, dispatchers, and warehousemen. The second unit consists of all full-time and part-time bookkeepers, accounts receivable clerks, drive-through clerks, front counter customer service representatives, and customer service representatives.

Both parties stipulate that the CTV Producer and the General Secretary/Administrative Assistant should not be included in any unit. Neither the Petitioner nor the Employer, moreover, seeks to include the part-time CTV Assistant in any unit. Finally, both parties stipulate that the sales team members and direct sales representatives should not be included in any unit.

II. Employer's Motion to Reopen the Record

The Employer filed a post-hearing motion seeking to reopen the record in order to receive testimony from Sandy Rusher, an employee of the Petitioner. At hearing, the Employer attempted to call Rusher as its first witness to demonstrate that the extent of organization was controlling in this case. The Hearing Officer denied this request. In its post-hearing motion, the Employer argues that it was entitled to examine Rusher about job classifications within the industry, about the fact that the Petitioner had opposed wall-to-wall units in recent years, and about the absence of a community of interest among employees in the petitioned-for unit. Finally, the Employer argues that it could show through Rusher's testimony that absent voluntary recognition by an employer, the Petitioner has previously wanted no part of a wall-to-wall unit in the cable television industry.

Prior to hearing, the Employer made no attempt to subpoena Rusher. At hearing, the Employer failed to make an offer of proof with regard to Rusher's testimony and, most

importantly, did not state how Rusher could provide any evidence about the appropriateness of the petitioned-for unit.

I have considered the Employer's arguments and find that it has presented no evidence that Rusher's testimony would have assisted in a determination of unit appropriateness. Additionally, the Employer failed to demonstrate it was prejudiced by the Hearing Officer's ruling. Accordingly, the Employer's motion to reopen the record is denied.

III. The Regional Director's Findings

I have considered the evidence adduced during the hearing and the arguments advanced by both parties. For the reasons set forth below, I find that the employees in the petitioned-for unit share a sufficiently strong community of interest, and accordingly, I will direct an election in a unit consisting of approximately 36 employees.

To lend a context to my discussion of the issues, I will first provide an overview of the Employer's operations and supervisory structure. Then, I will discuss the evidence regarding community of interest and the reasoning that supports my findings.

IV. Overview of Employer's Operations and Supervisory Structure

The Employer provides cable and television services for Longview, Kilgore, and the surrounding areas. It has facilities located in Longview and Kilgore. All of the Employer's employees, with the exception of Rita Hudgins (Bookkeeper), work out of the Longview facility. Hudgins works at the Kilgore facility located approximately 10 miles from Longview. During the normal course of business, the Employer employs approximately 47 employees.

Robert Durham is the Regional Vice-President/General Manager and oversees all operations. Cindy Callaway is the General Secretary/Administrative Assistant and works

directly below Durham. The parties stipulated, and I find, that Callaway is a confidential employee.

Rodney Fletcher is the Regional Plant Manager. Larry Roy (Installation Manager), Kelly Shaw (Chief Technician), all service technicians, the dispatcher, and the warehouseman report directly to Fletcher. All installer technicians report directly to Roy and all maintenance technicians report directly to Shaw.

Cynthia Walters is the Regional Business Manager. Don Deem (Direct Sales Manager), the bookkeeper, the accounts receivable clerk, the drive-through clerk, the front counter customer service representatives, and all customer service representatives report directly to Walters. The sales team members also report to Walters, but their position is currently being relocated to a call center in Little Rock, Arkansas. All direct sales representatives report directly to Deem.

Wes Southern is the CTV Producer, and a CTV assistant reports directly to him.

The parties stipulated, and I find, that Durham, Walters, Fletcher, Roy, Shaw, and Deem are supervisors within the meaning of Section 2(11) of the Act.

V. The Appropriateness of the Petitioned-for Unit

The Board first announced the community of interest concept in *Kalamazoo Paper Box Corporation*. 136 NLRB 134 (1962). “In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration.” *The Boeing Company*, 337 NLRB No. 24 (2001) (citations omitted).

Accordingly, I will first discuss the job duties of each classification and then the evidence regarding the other factors.

A. Job Duties

Installer Technicians

The Employer presently employs 15 installer technicians. Installer technicians perform a variety of duties pertaining to the installation, reconnection, and disconnection of the Employer's service to customer's homes, apartments, condominiums, or commercial properties.

Maintenance Technicians

The Employer presently employs four maintenance technicians, who are primarily responsible for the operations and maintenance of the cable system. Duties include preventive maintenance with necessary record keeping, location and repair of equipment/plant failures on the cable systems, technical training with installers, and limited service work with customer trouble calls. Maintenance technicians must be knowledgeable with construction techniques, cable television plant technology and equipment, and all available services and programming. They must be able to perform all installation, service technician, and general technician duties.

Service Technicians

The Employer presently employs four service technicians. Service technicians attempt to solve any problems customers may have with the Employer's services or equipment. Their duties include fixing bad wiring, alleviating bad reception, checking fittings on the back of television sets, replacing drops from the street to the home, and educating customers on the use of their equipment.

Dispatchers

The Employer presently employs one dispatcher. Dispatchers assign and prepare (as directed) work orders, trouble calls, and repairs. They also check in orders, assure that all work assigned is completed and accounted for, dispatch new assignments, notify management of outages, document outages in the computer, look up accounts, relay messages between field and office staff, contact customers by phone to verify appointments, and advise of changes in customer scheduling.

Warehousemen

The Employer presently employs one warehouseman, who oversees much of the equipment aspects of the Employer's business. The warehouseman is responsible for ordering equipment, shipping equipment, stocking equipment, unloading equipment, and, sometimes, testing the equipment.

Customer Service Representatives

The Employer presently employs seven customer service representatives. Customer service representatives must be able to communicate clearly with both the customers and the staff via telephone and mail. Inquiries usually involve new service orders, billing and payment history, and service reception problems. They also take payments, take orders, and issue equipment.

Front Counter Customer Service Representatives

The Employer presently employs one front counter customer service representative. The front counter customer service representative performs the same responsibilities as a customer service representative but has more interaction with customers who come to the Employer's

facilities. This position may require that one is able to work at either the Longview or Kilgore facility.

Drive-Through Clerk

The Employer presently employs one drive-through clerk. This position is primarily responsible for handling any type of payment made by customers using the Employer's drive-through service.

Bookkeeper

The Employer presently employs one bookkeeper, who works out of the Kilgore facility. This position also performs the customer service representative duties. In addition, it requires handling the daily deposits and maintaining the monthly balance.

Accounts Receivable Clerk

The Employer presently employs one accounts receivable clerk. This position is primarily responsible for recording payments to customers' accounts and maintaining the accounts receivable records.

B. Community of Interest Factors

Wages and Benefits

All employees are paid biweekly on an hourly basis and have the option of earning overtime. The installer technicians, maintenance technicians, service technicians, dispatcher, and warehouseman earn between \$8 and \$15 per hour. The customer service representatives, front counter customer service representative, drive-through clerk, bookkeeper, and accounts receivable clerk earn between \$6.75 and \$10 per hour. All employees receive the same employee benefits package.

Hours of Work

All employees are normally scheduled to work eight hours per day, five days per week. The shifts range from approximately 8:00 a.m. to 5:00 p.m., 8:30 a.m. to 5:30 p.m., 9:00 a.m. to 6:00 p.m., and 10:00 a.m. to 7:00 p.m. Although almost all employees work Monday through Friday, some installer technicians, service technicians, and a dispatcher work Tuesday through Saturday.

Other Working Conditions

All employees, with the exception of the bookkeeper, work out of the Employer's Longview facility. All employees use the same break-room and punch the same time clock. The Employer's facility includes one set of restrooms for all employees at the Longview facility. Additionally, all employees at the Longview facility use the same entrance. The same employee handbook covers all employees. Only installer technicians, maintenance technicians, and service technicians are required to wear uniforms, allowed extended usage of the Employer's vehicles, and utilize special tools.

Commonality of Supervision

Installation Manager Larry Roy supervises all installer technicians. Chief Technician Kelly Shaw supervises all maintenance technicians. Regional Plant Manager Rodney Fletcher supervises all service technicians, the dispatcher, and the warehouseman. Regional Business Manager Cynthia Walters supervises the bookkeepers, the accounts receivable clerk, the drive-through clerk, the front counter customer service representative, and all customer service representatives.

Degree of Skill and Common Functions

To become an installer technician, dispatcher, warehouseman, bookkeeper, accounts receivable clerk, drive-through clerk, front counter customer service representative, or customer service representative, one must have a high school diploma, general education degree (GED), one to six months related experience and/or training, or the equivalent combination of education and experience. The preferred candidates should also possess some skills particular to each position. In addition, further training for these positions is available through the Employer or through the National Cable Training Institute (NCTI). After working for the Employer for 90 days, installer technicians are required to enroll in a NCTI course. The service technician and maintenance technician positions require more education, training, and/or experience than any other positions. Any employee (particularly an installer technician) is eligible to become a service technician or maintenance technician, however, through proper NCTI training.

With regard to common job functions, all employees must be familiar with several aspects of the Employer's operations. First, all employees share a general knowledge of the Employer's equipment. Although the warehouseman and technicians may be more intimately involved with the equipment, all customer service representatives and the front counter customer service representative undertake some basic troubleshooting and handle the equipment for pick-up and drop-off services. Second, customer payments may occur through virtually any employee. Some customers make payments over the phone or in person through the bookkeeper, the accounts receivable clerk, the drive-through clerk, the front counter customer service representative, and the customer service representatives. Other customers may make payments directly to a technician who has made a house call. Third, all employees are encouraged to sell customers additional products, such as upgrades. Although this task traditionally falls within the

domain of the customer service representatives, who receive sales-based incentives, technicians are also responsible for sales and may receive similar incentives from specific programmers. Four times per year, all employees gather for an event known as “Call Night,” when they attempt to make telephone sales and earn rewards based on their number of sales.

Frequency of Contact and Interchange

All employees come into contact with each other in performing their daily duties. Besides the monthly meetings, all employees, with the exception of the bookkeeper, work out of the Employer’s Longview facility. The accounts receivable clerk, the drive-through clerk, the front counter customer service representatives, and the customer service representatives work at the front of the facility. The warehouse is located in the back of the facility. Adjacent to the hallway that leads from the front to the back of the facility is a cubicle for the dispatcher, offices for some of the supervisors, and a bench-type area for the technicians. Although technicians spend a good portion of their day on the road in the Employer’s vehicles, the record reflects that Front Counter Customer Service Representative Danette Roach spends approximately 20 to 25 percent of her week in contact (either on the phone or in person) with the technicians and/or the dispatcher. Moreover, Roach speaks with the warehouseman between three and four times per day and makes at least one trip to the warehouse per day. The record also reflects that Customer Service Representative Brandi Turner spends 40 to 50 percent of her week dealing with installer technicians, maintenance technicians, service technicians, the warehouseman, and/or the dispatcher.

Call Night, Employer-sponsored picnics and holiday parties, a common break-room, and a common smoking area also provide ample opportunity for frequent employee contact.

Interchange generally occurs within either the technical side or the customer service side of the Employer's operations. When technicians are placed on light duty, however, they may be moved into a customer service representative position. One technician is presently in this position. The record reflects that a technician not on light duty has helped out in the accounts receivable and customer service representative positions and that Maria Fuller, the current dispatcher, has also held the positions of front counter customer service representative, customer service representative, warehouseman, and bookkeeper. Customer service representatives have ridden along with technicians so that they have a better understanding of the Employer's entire enterprise. Finally, with the proper training, the Employer permits interdepartmental transfer.

Functional Integration

The Employer's day-to-day operations illustrate the close relationship between customer service representatives and technicians. Daily, customer service representatives receive new installation orders and input the order information into a computer. The dispatcher then receives the order and assigns a technician to it. The warehouseman then prepares the equipment for the order, and, eventually, a technician installs the equipment.

Additional evidence of functional integration may be found in a technician's frequent need, while on a disconnect call, to contact a customer service representative to verify if a customer has, in fact, paid.

VI. Analysis

It is well established that "[a] petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate unit, and in representation proceeding, the unit sought by the petitioner is always a relevant consideration." *The Lundy Packing Co., Inc.*, 314 NLRB 1042, 1043 (1994). The burden of proving that the petitioned-for

unit is inappropriate lies with the party challenging the unit's appropriateness. *Livingstone College*, 290 NLRB 304, 305 (1988).

The Employer argues that the employees in the petitioned-for unit do not share a sufficient community of interest and that two units should exist: one "technical" unit (installer technicians, maintenance technicians, service technicians, dispatchers, and warehousemen) and one "office" unit (bookkeepers, accounts receivable clerks, drive-through clerks, front counter customer service representatives, and customer service representatives). Specifically, it states that the technical and office units suffer from a lack of interchange, lack of contact, different wages, different supervision, and different working conditions. In so stating, the Employer ignores the other community of interest factors (such as identical employee benefits and functional integration) and overstates the above-mentioned differences. Regarding lack of contact, for example, the Employer points to the fact that the technicians spend much of the day in the field but fails to mention technicians contacting customer service representatives to inquire about the status of disconnect accounts or the daily interaction between customer service representatives and the warehouseman over equipment issues.

Additionally, the Employer submits that Board law is well established that in the cable television industry, technicians do not have a substantial community of interest with customer service representatives, citing *Harron Communications, Inc.* as its lead case. 308 NLRB 62 (1992). *Harron* is distinguishable from the instant case. In *Harron*, like the majority of reported Board cases involving the cable television industry, the petitioner sought separate units of service representatives and technicians and the employer argued for a combined unit of the two groups. In these cases, the Board found the separate units appropriate because nothing is inherently inappropriate about the two groups being separated. Such a holding, however, does

not prohibit service representatives and technical employees from being included in a unit together. *id.* at 63. Furthermore, a wall-to-wall unit, such as the one sought by the Petitioner in this case, is presumptively appropriate. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964).

In view of the pertinent Board law and the evidence reflected in the record of the similar hours of work, wages, common benefits and other working conditions, degree of skill and common functions, frequency of contact and interchange, and functional integration, I find that the petitioned-for unit is an appropriate unit.

VII. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, a Texas corporation, is engaged in the business of providing cable and television services and has a place of business in Longview, Texas and in Kilgore, Texas. During the past twelve months, the Employer provided services in excess of \$1,000,000 and purchased goods and services in excess of \$50,000 from points outside the State of Texas. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the Petitioner's status as a labor organization.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and part-time installer technicians, maintenance technicians, service technicians, dispatchers, warehousemen, bookkeepers, accounts receivable clerks, drive-through clerks, front counter customer service representatives, and customer service representatives employed by Longview Cable Television Company, Inc. in Longview, Texas and Kilgore, Texas.

EXCLUDED: All other employees, including sales employees, production employees, confidential employees, office clerical and professional employees, guards, and supervisors as defined in the Act.

VIII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Communication Workers of America, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been

permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102, on or before May 27, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request

must be received by the Board in Washington by 5:00 p.m., EST, on June 2, 2003. The request may not be filed by facsimile.

Dated May 19, 2003, at Fort Worth, Texas.

/s/ *Curtis A. Wells*

Curtis A. Wells, Regional Director
NLRB Region 16

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